INDEX

CITATIONS

650565—46

In the Supreme Court of the United States

OCTOBER TERM, 1945

No. 505

GEORGE C. HOLMBERG, ET AL., PETITIONERS

v.

CHARLES ARMBRECHT, ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT

MEMORANDUM FOR THE UNITED STATES AS AMICUS CURIAE

Although not a party to this suit, the United States is interested in the issue presented for two reasons. In the first place the case involves a federal statute (Federal Farm Loan Act of July 17, 1916, Sec. 16, 39 Stat. 374, 12 U. S. C. Sec. 812) imposing upon bank stockholders liability equal to the value of their stock, and the policy of that Act will be defeated if stockholders are able to escape liability by concealing their ownership while the statute of limitations runs. Secondly, the problem presented applies to many rights created by federal law which will be impaired to some extent by affirmance of the decision below.

The Securities and Exchange Commission in particular is confronted with situations in which the rights guaranteed by the statutes it administers may be defeated through the concealment of material facts from persons possessing a statutory right of action.

Although various other points have been raised in this case, we are concerned only with the question, decided by the Circuit Court of Appeals, whether a state statute of limitations applies to a federally created right without the equitable limitation for concealed frauds which this Court has read into federal statutes of limitation. Since the Circuit Court of Appeals assumed, in passing upon the above question, that Bache and Armbrecht had inequitably concealed Bache's true ownership of the stock during the period of limitations, we shall do the same.

The decisions of this Court establish that in the absence of a Federal statute of limitations, state statutes of limitations will ordinarily[1] be applied to federally created rights of action "when consonant with equitable principles".

[1] A state limitation which discriminates against rights accruing under federal law or which unreasonably interferes with the enforcement of a federal right will not be applied. *Republic Pictures Corporation* v. *Kappler*, 151 F. (2d) 543 (C. C. A. 8), appeal pending No. 723; *Elliott* v. *Morrell & Co.*, 7 *Wage Hour Reporter* 1012 (S. D. Iowa, 1944); *cf. Fullerton* v. *Lamm*, 163 P. (2d) 941 (Ore. 1945); *Clark Lumber Co.* v. *Kurth* (C. C. A. 9, decided Dec. 6, 1945); *Sola Electric Co.* v. *Jefferson Electric Co.*, 317 U. S. 173, 176.

Russell v. *Todd,* 309 U. S. 280, 288, 293, and cases cited. *Guaranty Trust Co.* v. *York,* 1944 Term, No. 264, decided June 18, 1945, establishes that where in diversity cases there is no "claim based on a federal law", the state statute applies even though the result might be regarded as contrary to the principles of federal equity. On the other hand, *Bailey* v. *Glover,* 21 Wall. 342, and *Exploration Co.* v. *United States,* 247 U. S. 435 (and cases therein cited) establish that a federal equity court will read into a federal statute of limitations the qualification that "notwithstanding the positive terms of the statute, it did not begin to run until after the discovery of the fraud" (p. 447). These decisions leave open the status of a suit in equity upon a claim created by federal law where there is no federal statute of limitations and where there has been concealment.

The court below held that the *York* case applied to this situation. We believe (1) that this holding disregards the entire rationale of the *York* decision, and (2) that if a federal equity court will toll a Congressionally enacted statute of limitations to prevent frustration of a federal substantive statutory policy by concealment of a fraud, *a fortiorari* the application of state statutes of limitations to federal rights of action should be subject to the same qualification.

1. The court below admitted (R. 118) that this Court in the *York* case disclaimed deciding the status of rights based on federal law. The Court

nevertheless thought that "the rationale of the *York* case requires the application of the New York statute to this action", although based on a federal statute (R. 117), because that case emphasized the desirability of "the practical policy of uniformity embodied in *Erie R. Co.* v. *Tompkins*" (R. 121).

It is our view that the "practical policy of uniformity embodied in" the *Tompkins* case related solely to the distribution of judicial power between state and federal courts in diversity cases where the federal court is a special tribunal to administer the law of the state in which it sits. In such cases, where state law is being applied, "the outcome of the litigation in the federal court should be substantially the same, so far as legal rules determine the outcome of a litigation, as it would be if tried in a State court. The nub of the policy that underlies *Erie R. Co.* v. *Tompkins* is that for the same transaction the accident of a suit by a non-resident litigant in a federal court instead of in a State court a block away should not lead to a substantially different result." (*Guaranty Trust Co.* v. *York*, Slip Opinion, p. 8–9.)

These considerations do not apply where, as in the instant case a right is derived from a federal statute. It is then more important that the policy of Congress be effectuated and that there be, so far as possible, uniformity in application throughout the nation than that there be uni-

formity between the state and federal courts in the same state. Obviously state policy would seem to be irrelevant in so far as the enforcement of a federal right is concerned. And if the federal rule were more liberal than that in a particular state, suits in that state would presumably be brought in the federal court, so that in practical effect the federal rule would be controlling in all the states and uniformity thereby obtained. This is much more desirable, as well as more in harmony with federal legislative policy, than that the result vary from state to state.

It is true that divergent results will not be entirely avoided, since, in the absence of a federal limitation, the state statute of limitations will normally prevail. In the absence of concealment this would not seriously impair the protection of federal rights. But certainly it is desirable that there be a uniform rule throughout the country as to whether concealment of essential facts tolls the period of limitation, and that the area of divergency in enforcing federal rights be as narrow as possible.[2]

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[2] It is, of course, unnecessary to decide in this case whether when a federal right of action is the basis for suit in a state court the state court would be required to apply the federal rule with respect to equitable grounds for tolling the statute of limitations. Our point is merely that if the same rule must be applied in the federal and state courts sitting in the same state, the policy of uniformity and the substantive policy of Congress can both be effectuated only if the federal rather than the state rule prevails.

2. The same considerations of policy which have caused this Court consistently to rule that federal statutes of limitation do not run if the "plaintiff's ignorance of his rights" results from the "fraud or inequitable conduct of the defendant." (*Russell* v. *Todd*, 309 U. S., at 288–289n), should govern the present situation. The underlying basis for *Bailey* v. *Glover*, *Exploration Co.* v. *United States*, and similar cases is to prevent the defeat of the substantive policy embodied in the federally created right. In the *Bailey* case Congress had specifically provided in Section 2 of the Bankruptcy Act of 1867 that "no suit * * * in equity shall * * * be maintainable * * * unless the same shall be brought within two years from the time of the cause of action accrued for or against such assignee." 21 Wall., at 344. In the *Exploration Co.* case the pertinent statute provided that "suits to vacate and annul [land] patents hereafter issued shall only be brought within six years after the date of the issuance of such patents" (24 U. S., at 455). Nevertheless in the latter case this Court stated, in referring to the *Bailey* case that (247 U. S., at 447):

> This court, after a full review of decisions English and American, decided that, notwithstanding the positive terms of the statute, it did not begin to run until after the discovery of the fraud. In the course of the opinion Mr. Justice Miller said:

"They [statutes of limitation] were enacted to prevent frauds; to prevent parties from asserting rights after the lapse of time had destroyed or impaired the evidence which would show that such rights never existed, or had been satisfied, transferred, or extinguished, if they ever did exist. To hold that by concealing a fraud, or by committing a fraud in a manner that it concealed itself until such time as the party committing the fraud could plead the statute of limitations to protect it, is to make the law which was designed to prevent fraud the means by which it is made successful and secure."

It will be observed in that statute, as in the one now under consideration, there was no provision that the cause of action should not be deemed to have accrued until the discovery of the fraud. But it was held that for the purpose of such statutes the cause of action did not accrue until the discovery of the fraud; and that such was the undisputed doctrine of courts of equity, and that the weight of authority, English and American, applied the same rule to actions at law.

Clearly the effectuation of the policy of the substantive federal statute involved in this case, imposing additional liability upon bank stockholders,[3] will be furthered if the inequitable con-

[3] The primary purpose of the Federal Farm Loan Act was to make available farm credit in the form of long-term mortgage loans not available from ordinary commercial

cealment of essential facts by the stockholders is not permitted to deprive the bank creditors of their right of recovery. Under the cases cited such concealment would be ineffective to protect the stockholders even though a period of limitations specifically imposed by federal statute had expired.

The state statutes of limitations applied by federal equity courts do not, of course, have the same binding effect as a federal law. The state statutes are not binding upon the courts in such cases but are followed only by way of analogy and comity, to the extent "consonant with equitable principles." *Russell* v. *Todd*, 309 U. S., at 288. Thus if the federal courts feel free, out of regard for federal legislative policy and principles of equity, to override or qualify an express limitation imposed by Congress, they are even more free to disregard state statutes of limitations in the same circumstances.

Under federal statutes a federal court may not apply a state policy as expressed in some local statute where the result would be contrary to the federal policy embodied in the particular federal statute involved. See *D'Oench, Duhme and Co.*

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banks. To attract capital for the farm loan banks Congress relied primarily upon issuing low interest bearing bonds attractive to persons requiring "absolute safety." S. Rep. No. 144, 64th Cong., 1st Sess., p. 4; H. R. Doc. No. 494, 64th Cong., 1st Sess. The imposition of double liability upon stockholders (referred to in the Senate Report at p. 11) was obviously intended to increase the safety of these investments.

v. *Federal Deposit Insurance Corporation*, 315 U. S. 447;[4] *Deitrick* v. *Greaney*, 309 U. S. 190;

[4] Thus, even under the more limited view set forth in Mr. Justice Jackson's opinion in that case (315 U. S. at 465–475), examination of the federal policy is required:

"The immunity of such a [federal] corporation from schemes concocted by the cooperative deceit of bank officers and customers is not a question to be answered from considerations of geography. That a particular state happened to have the greatest connection, in the conflict of laws sense, with the making of the note involved, or that the subsequent conduct happened to be chiefly centered there, is not enough to make us subservient to the legislative policy or the judicial views of that state." (315 U. S. at 473.)

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"The policy of the federal Act does not seem to me to leave dependent on local law the question whether one may plead his own scheme to deceive a bank's creditors and supervising authorities as against the Corporation. (315 U. S. at 474–475.)

* * * * * * *

"A federal court sitting in a non-diversity case such as this does not sit as a local tribunal. In some cases it may see fit for special reasons to give the law of a particular state highly persuasive or even controlling effect, but in the last analysis its decision turns upon the law of the United States, not that of any state." (315 U. S. at 471.)

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"Federal law is no juridicial chameleon, changing complexion to match that of each state wherein lawsuits happen to be commenced because of the accidents of service of process and of the application of the venue statutes. It is found in the federal Constitution, statutes, or common law. Federal common law implements the federal Constitution and statutes, and is conditioned by them. Within these limits, federal courts are free to apply the traditional common-law technique of decision and to draw upon all the sources of the common law in cases such as the present. *Board of Commissioners* v. *United States*, 308 U. S. 343, 350." (315 U. S. at 471–2.)

Clearfield Trust Co. v. *United States,* 318 U. S. 363. It is submitted that a federal court unwarrantedly surrenders its proper function to construe federal statutes in accordance with the Congressional intention when it blindly follows a state limitation statute, the application of which will nullify the clear purpose of the federal legislation involved. Thus to follow such a local statute in asserted pursuance of a general policy of uniformity is to misconstrue the uniformity rule. Clearly the immunity of creditors of a federal joint stock land bank from schemes concocted by stockholders of the bank to avoid statutory liability is not a question to be answered from considerations of geography. The policy of Section 16 of the Farm Loan Act should not leave dependent on local law the question whether actual owners of stock can escape liability by permitting their stock to be carried in such a way on the books of the bank as to prevent discovery of their status until after limitations of time otherwise applicable have run.

A decision on the question here involved will, of course, affect many other federal rights, and it is because of its general consequences that we have submitted this brief. The effect upon private rights of action under those statutes administered by the Securities and Exchange Commission is illustrative. In those statutes Congress has attempted to regulate conduct and activities in many areas of the broad field of corporate

finance. In the case of certain statutory provisions giving rise to civil liability there are specific statements with reference to the periods of limitation applicable thereto. On the other hand, it has been recognized that private parties may bring civil actions for violation of other statutory provisions even though the statute does not specifically provide for such actions and, of course, does not prescribe a limitation period therefor. The right to bring such actions exists by reason of the general rule of law that members of a class for whose protection a statutory duty is created may sue for injuries resulting from its breach and that the common law will supply a remedy if the statute gives none. See *Baird* v. *Franklin,* 141 F. 2d 238 (C. C. A. 2 1944), certiorari denied, 323 U. S. 737.

The civil liabilities imposed by these statutes may well be accompanied by fraud or breach of fiduciary duty coupled with concealment of the facts which give rise to the causes of action. Furthermore, those injured by violation are frequently scattered and uninformed investors. There is likely to be considerable time lag before they obtain legal advice as to whether they may have a cause of action for investment loss. This is often the case even where the relevant information is available to the public. Further time may be required where the expense of litigation is disproportionate to the amount any one individual may have at stake, so that concerted

action is necessary. It is therefore patent that a state statute of limitations which applies regardless of concealment of pertinent facts and the consequently late discovery thereof can very well defeat the entire purpose of the federal statute.[5]

In view of the foregoing, we submit that a federal court must disregard a state statute of limitations where its application would have the effect of thwarting the policy of the federal statute giving rise to the right upon which the action is based. The federal court should apply instead such principles of general federal law as are consistent with the policy of the federal

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[5] The pending case of *Austrian* v. *Williams*, Civ. Action No. 32–149 (S. D. N. Y.), referred to in the brief filed by the trustees of Central States Electric Corporation as *amici curiae* presents a related problem. That case involved the application of a federal statute of limitation (Bankruptcy Act, § 11 (e), 11 U. S. C. § 29e) interpreted in the light of the doctrine in *Bailey* v. *Glover*, 21 Wall 342, to a right of action which the bankruptcy law vests in the trustee but which is ultimately derived from rights of the bankrupt under state law—although in that case not under the law of the forum whose limitation was invoked but under the law of another state in which the right of action was not barred. The defendant there is contending that the case is governed by the decision below in this case and by this Court's decision in the *York* case. Inasmuch as the period of limitation in the *Williams* case is prescribed by federal law, the question there presented is clearly distinguishable from that involved here. Each case, however, raises the general problem as to the extent to which the uniformity concept embodied in *Erie R. Co.* v. *Tompkins*, 304 U. S. 64, should be regarded as controlling with respect to tolling a statute of limitations on equitable grounds in a field which is the subject of federal regulation but as to which the federal statute is not explicit.

statute. The legal rationale for such a rule has a sound foundation in the decisions of this Court, and can be articulated either in terms of the rule that a federal equity court will not apply a state statute to an action involving a federally created right where defendants have inequitably concealed pertinent facts relating to the cause of action, or in terms of the established principle that in any action on a right created by a federal statute a federal court will not blindly follow local statutes where to do so would defeat the federal policy contained in the federal law.

CONCLUSION

For these reasons it is respectfully submitted that the judgment below should be reversed.

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SUPREME COURT OF THE UNITED STATES.

No. 505.—October Term, 1945.

George C. Holmberg, Frank C. Ball, Carl J. Easterberg, et al., on behalf of themselves and all other creditors of the Southern Minnesota Joint Stock Land Bank of Minneapolis, Petitioners,
vs.
Charles Armbrecht and Gilbert Miller, Barbara Richards Michel, et al., as Executors under the last will and testament of Jules S. Bache, deceased.

On Writ of Certiorari to the United States Circuit Court of Appeals for the Second Circuit.

[February 25, 1946.]

Mr. Justice Frankfurter delivered the opinion of the Court.

This is a suit in equity by petitioners on behalf of themselves and all other creditors of the Southern Minnesota Joint Stock Land Bank of Minneapolis to enforce the liability imposed upon shareholders of the Bank by § 16 of the Federal Farm Loan Act, equal to one hundred percent of their holdings. 39 Stat. 360, 374, 12 U. S. C. § 812.[1] The Bank closed its doors in May, 1932. Its debts exceeded its assets by more than $3,000,000, the amount of its outstanding stock. Suit was accordingly brought in the United States District Court for the District of Minnesota for determining and collecting the assessment due under § 16. *Holmberg* v. *Southern Minnesota Joint Stock Land Bank of Minnesota*, 10 F. Supp. 795. Armbrecht, a New York stockholder, was sued there. The suit failed on procedural grounds and was dismissed without prejudice to further action. *Holmberg* v. *Anchell*, 24 F. Supp. 594, 598. Not until 1942, so it is alleged, did petitioners learn that Jules S. Bache had concealed his ownership of one hundred shares of the Bank stock under the name of Charles Arm-

[1] "Shareholders of every joint stock land bank organized under this Act shall be held individually responsible, equally and ratably, and not one for another, for all contracts, debts, and engagements of such bank to the extent of the amount of stock owned by them at the par value thereof, in addition to the amount paid in and represented by their shares."

brecht. The present action against Armbrecht and Bache was begun in the Southern District of New York in November, 1941. Bache died during pendency of the suit and his executors were substituted as parties.

The respondents made two defenses: (1) they invoked a New York statute of limitation barring such an action after ten years. New York Civil Practice Act, § 53; (2) they urged laches, claiming that petitioners had unduly delayed commencement of the suit. Neither defense was sustained in the District Court, and judgment went against the respondents. The judgment was reversed by the Circuit Court of Appeals. 150 F. (2d) 829. That court did not reach the defense of laches because it held, relying on *Guaranty Trust Co.* v. *York*, 326 U. S. 99, that the New York statute of limitation was controlling and that the mere lapse of ten years barred the action. Since the case raises a question of considerable importance in enforcing liability under federal equitable enactments, we brought it here for review. 326 U. S. —.

In *Guaranty Trust Co.* v. *York*, *supra*, we ruled that when a State statute bars recovery of a suit in a State court on a State-created right, it likewise bars recovery of such a suit on the equity side of a federal court brought there merely because it was "between Citizens of different States" under Art. III, § 2 of the Constitution. The amenability of such a federal suit to a State statute of limitation cannot be regarded as a problem in terminology, whereby the practical effect of a statute of limitation would turn on the content which abstract analysis may attribute to "substance" and "procedure." We held, on the contrary, that a statute of limitation is a significant part of the legal rules which determine the outcome of a litigation. As such, it is as significant in enforcing a State-created right by an exclusively equitable remedy as it is in an action at law. But in the *York* case we pointed out with almost wearisome reiteration, in reaching this result, that we were there concerned solely with State-created rights. For purposes of diversity suits a Federal court is, in effect, "only another court of the State." *Guaranty Trust Co.* v. *York*, *supra*, at 108. The considerations that urge adjudication by the same law in all courts within a State when enforcing a right created by that State are hardly relevant for determining the rules which bar enforcement of an equitable right created not by a State legislature but by Congress.

If Congress explicitly puts a limit upon the time for enforcing a right which it created, there is an end of the matter. The Congressional statute of limitation is definitive. See, *e. g.*, *Herget* v. *Central Bank Co.*, 324 U. S. 4. The rub comes when Congress is silent. Apart from penal enactments, Congress has usually left the limitation of time for commencing actions under national legislation to judicial implications. As to actions at law, the silence of Congress has been interpreted to mean that it is federal policy to adopt the local law of limitation. See *Campbell* v. *Haverill*, 155 U. S. 610; *Chattanooga Foundry & Pipe Works* v. *City of Atlanta*, 203 U. S. 390; *Rawlings* v. *Ray*, 312 U. S. 96. The implied absorption of State statutes of limitation within the interstices of the federal enactments is a phase of fashioning remedial details where Congress has not spoken but left matters for judicial determination within the general framework of familiar legal principles. See *Board of Comm'rs* v. *United States*, 308 U. S. 343, 349-50, 351-52.

The present case concerns not only a federally-created right but a federal right for which the sole remedy is in equity. *Wheeler* v. *Greene*, 280 U. S. 49; *Christopher* v. *Brusselback*, 302 U. S. 500; *Russell* v. *Todd*, 309 U. S. 280, 285. And so we have the reverse of the situation in *Guaranty Trust Co.* v. *York*, *supra*. We do not have the duty of a federal court, sitting as it were as a court of a State, to approximate as closely as may be State law in order to vindicate without discrimination a right derived solely from a State. We have the duty of federal courts, sitting as national courts throughout the country, to apply their own principles in enforcing an equitable right created by Congress. When Congress leaves to the federal courts the formulation of remedial details, it can hardly expect them to break with historic principles of equity in the enforcement of federally-created equitable rights.

Traditionally and for good reasons, statutes of limitation are not controlling measures of equitable relief. Such statutes have been drawn upon by equity solely for the light they may shed in determining that which is decisive for the chancellor's intervention, namely, whether the plaintiff has inexcusably slept on his rights so as to make a decree against the defendant unfair. See *Russell* v. *Todd*, *supra*, at 289. "There must be conscience, good faith, and reasonable diligence to call into action the powers of the court." *McKnight* v. *Taylor*, 1 How. 161, 168. A federal

court may not be bound by a State statute of limitation and that court may dismiss a suit where the plaintiffs' "lack of diligence is wholly unexcused; and both the nature of the claim and the situation of the parties was such as to call for diligence." *Benedict* v. *City of New York*, 250 U. S. 321, 328. A suit in equity may fail though "not barred by the act of limitations." *McKnight* v. *Taylor, supra*; *Alsop* v. *Ritter*, 155 U. S. 448.

Equity eschews mechanical rules; it depends on flexibility. Equity has acted on the principle that "laches is not like limitation, a mere matter of time; but principally a question of the inequity of permitting the claim to be enforced—an inequity founded upon some change in the condition or relations of the property or the parties." *Galliher* v. *Cadwell*, 145 U. S. 368, 373; see *Southern Pacific Co.* v. *Bogert*, 250 U. S. 483, 488-89. And so, a suit in equity may lie though a comparable cause of action at law would be barred. If want of due diligence by the plaintiff may make it unfair to pursue the defendant, fraudulent conduct on the part of the defendant may have prevented the plaintiff from being diligent and may make it unfair to bar appeal to equity because of mere lapse of time.

Equity will not lend itself to such fraud and historically has relieved from it. It bars a defendant from setting up such a fraudulent defense, as it interposes against other forms of fraud. And so this Court long ago adopted as its own the old chancery rule that where a plaintiff has been injured by fraud and "remains in ignorance of it without any fault or want of diligence or care on his part, the bar of the statute does not begin to run until the fraud is discovered though there be no special circumstance or effort on the part of the party committing the fraud to conceal it from the knowledge of the other party." *Bailey* v. *Glover*, 21 Wall. 342, 348; and see *Exploration Co.* v. *United States*, 247 U. S. 435; *Sherwood* v. *Sutton*, 5 Mason 143.

This equitable doctrine is read into every federal statute of limitation. If the Federal Farm Loan Act had an explicit statute of limitation for bringing suit under § 16, the time would not have begun to run until after petitioners had discovered, or had failed in reasonable diligence to discover, the alleged deception by Bache which is the basis of this suit. *Bailey* v. *Glover, supra*; *Exploration Co.* v. *United States, supra*; *United States* v. *Diamond Coal Co.*, 255 U. S. 323, 333. It would be too incongruous to confine a

federal right within the bare terms of a State statute of limitation unrelieved by the settled federal equitable doctrine as to fraud, when even a federal statute in the same terms would be given the mitigating construction required by that doctrine.

We conclude that the decision in the *York* case is inapplicable to the enforcement of federal equitable rights. The federal doctrine applied in *Bailey* v. *Glover*, *supra*, and in the series of cases following it, governs. When the liability, if any, accrued in this case, *cf. Rawlings* v. *Ray*, *supra*, at 98, and whether the petitioners are chargeable with laches, see *Foster* v. *Mansfield, Coldwater & c. Railroad*, 146 U. S. 88, 99; *Southern Pacific Co.* v. *Bogert*, *supra*, at 488, are questions as to which we imply no views. We leave them for determination by the Circuit Court of Appeals to which the case is remanded.

Reversed and remanded.

Mr. Justice JACKSON took no part in the consideration or decision of this case.

Mr. Justice RUTLEDGE, concurring.

I agree with the result and with the opinion, reserving however any intimation, explicit or implied, as to the full scope to which the doctrine of *Guaranty Trust Co.* v. *York*, 326 U. S. 99, may be applied in diversity cases. Many of the considerations now stated by the Court for refusing to extend that doctrine to cases concerning federally created rights, relating to the flexibility of remedies in equity either to cut down or to extend the state statutory period of limitations, seemed to me to be applicable whenever a federal court might be asked to extend the aid of its equity arm, whether in its diversity jurisdiction or other. The ruling in the *York* case however may be accepted generally for diversity cases and, moreover, rejected for extension to cases of this sort, without indicating that there may not be some cases even of diversity jurisdiction to which federal courts may not be required to apply it. With this reservation I join in the Court's action.